

**PT 98-103**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>NORWAY IMPROVEMENT LEAGUE</b>	)	<b>Docket #</b>	<b>97-50-19</b>
<b>Applicant</b>	)	<b>A.H. Docket #</b>	<b>98-PT-07</b>
<b>v.</b>	)	<b>Parcel Index #</b>	<b>10-33-118-000</b>
	)		
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>	
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>	

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Paul V. Martin, Hupp, Lanuti, Irion & Martin, P.C. for Norway Improvement League.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Springfield, Illinois on May 14, 1998, to determine whether or not LaSalle County Parcel Index No. 10-33-118-000 qualified for a property tax exemption during the 1997 assessment year.

Wayne L. Borchsenius of the Norway Improvement League, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the parcel was used by the applicant for charitable purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned the parcel at issue during the entire 1997 assessment year. It is also determined that the applicant is not a charitable organization. Finally, it is determined

that the applicant did not use the parcel for charitable purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that LaSalle County Parcel Index No. 10-33-118-000 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 6. (Tr. p. 8)

2. On September 3, 1997, the Department received a property tax exemption application from the LaSalle County Board of Review for Permanent Parcel Index No. 10-33-118-000. The applicant had submitted the request, and the board recommended granting a full year exemption for the 1997 assessment year. The Department assigned Docket No. 97-50-19 to the application. (Dept. Grp. Ex. No. 2)

3. On December 26, 1997, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices, 101 W. Jefferson, Springfield, Illinois, on May 7, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject property by a warranty deed dated November 15, 1974. (Dept. Ex. No. 2 p. 3)

7. The subject parcel contains 4.20 acres. Located on the property are a 6250 square foot one-story community building and a 300 square foot one-story log cabin. A parking area adjoins the community building. The remainder of the area is a park. (Dept. Ex. No. 2 pp. 1, 4-11, 23)

8. The applicant was incorporated under the general not for profit corporation act on August 8, 1967. (Dept. Ex. No. 2 p. 20)

9. The bylaws and articles of incorporation of the applicant state that the "primary purpose of this Corporation is to promote the improvement of the Community of Norway, and preservation of its historical heritage." The bylaws state that the applicant has a regular member

classification with annual dues of \$2.00 per year. The applicant is organized as a non-profit corporation with no shares of stock and no dividends paid. No part of the income of the corporation will be distributed to its members, directors, or officers. (Dept. Ex. No. 2 pp. 12, 21; Ex. No. 6 p. 1-6)

10. The applicant is exempt from the payment of federal income tax pursuant to a 501(c)(3) designation by the Internal Revenue Service. (Dept. Ex. No. 2 pp. 18-19)

11. The community building is divided into a 400 square foot community center room, a kitchen, restrooms, and a meeting room. (Dept. Ex. No. 6 p. 9)

12. The applicant allows all not for profit, fraternal, historical, educational, and athletic organizations to use the community building free of charge. The building is regularly used for various groups including: girl scout meetings; meetings of the Cling Pearson Lodge No. 525 Sons of Norway, a fraternal society concerned with the preservation of Norwegian heritage; Unit 2 teacher's association meetings; Norwegian Sloop Society meetings, a group composed of the descendents of the original settlers of Norway, Illinois; Northern Illinois Rosemalers Association meetings, a Norwegian painting association; and as a polling place. The building has frequently been a distribution point for food from Catholic Charities. Benefits and other fund-raisers held by organizations and church groups are also conducted in the community building. (Dept. Ex. No. 2 p. 23, 25; Dept. No. 6 p. 7; Tr. pp. 12-16)

13. The applicant has bingo license B-1057, issued by the Department. Bingo is played in the community building on Monday nights. (Dept. Ex. No. 2 pp. 1, 4; Dept. Ex. No. 6 p. 13; Tr. p. 26)

14. Applicant has pull tab license P-1095. In 1997, the applicant had gross income from pull-tabs in the amount of \$26,130.00; expenses of \$6,093.00, for a net income from pull tabs of \$20,037.00. The gross income for bingo for the same time period was \$13,504.00, with expenses of \$4,839.00, for a net income from bingo of \$8,665.00. Applicant's total net income for 1997 was \$33,331.00. Applicant had expenses during that year of \$50,207.00. That amount includes \$32,819.00 for repairs and remodeling of the subject property. (Dept. Ex. No. 6 p. 10)

15. The applicant does not have written rental agreements for the use of the building. Groups often make donations to the applicant for its use. The applicant also makes donations to the not-for-profit organizations that regularly use the building. Others also use the building for wedding receptions. The applicant requests a \$100.00 fee to cover the costs of the crew that cleans the building after an event is held. (Dept. Ex. No. 6 p. 7; Tr. p. 11-12, 18, 28)

16. Primarily, residents of Serena, Mission, and Miller townships use the park. League teams for T-ball, little league, girls' softball, men's softball, and elementary soccer play there. King Oluf of Norway dedicated a memorial in the park in 1975. (Dept. Ex. No. 2 pp. 5, 23)

17. The applicant has a year round program for collection of food for the Sheridan-Norway United Methodist Church food pantry. (Dept. Ex. No. 2 pp. 23, 24)

18. I take administrative notice of the fact that the applicant was granted a property tax exemption pursuant to Docket No. 75-50-09 for the subject property. The exemption letter was issued by the Department on June 3, 1976. (Dept. Ex. No. 4; Dept. Ex. 6 pp.11-12)

19. The applicant's intent, at the time of the purchase of the property, was to build a community building and a community park. The use of the subject parcel continued to be the same in the 1970's, 1980's through 1997. (Tr. p. 17-20)

20. Norway is an unincorporated community without a school; therefore, the region does not have the ball fields and related amenities associated with a larger locale. (Tr. p. 19-30)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago

v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

As there is no property tax exemption for community buildings, the applicant has requested a property tax exemption as a charitable organization. The appropriate statutory provision is found at 35 **ILCS** 200/15-65, which states:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;. . .

Here, the appropriate exemption applies to "institutions of public charity." Illinois courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). They have also ascribed to the following definition of "charity[.]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen at 157.

I find that the applicant has no capital stock or shareholders. Aside from that, I find that

the applicant does not satisfy criteria numbered 2, 3, 4, and 5 of the above guidelines found in Methodist Old People's Home. The primary sources of applicant's income are from bingo and pull-tabs. The applicant has no waiver of fees for its membership. I therefore find that the applicant is not a charitable organization and the use of the subject property is not for charitable purposes.

Regarding the exemption granted to the applicant pursuant to Docket 75-50-9 for the subject property, the Illinois courts have held that a property owner may be required to litigate the issue of exemption on an annual basis. Application of County Collector of DuPage County, 157 Ill.App.3d 355 (2<sup>nd</sup> Dist. 1987) In addition, the doctrine of *res judicata* is inapplicable to tax cases involving claims of an applicant for exemption for a different year. Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App.3d 816 (3<sup>rd</sup> Dist. 1978) I therefore can not rely upon a prior decision of exemption for the subject parcel.

For the aforementioned reasons, I recommend that LaSalle County Parcel Index No. 10-33-118-000 remain on the tax rolls for the 1997 assessment year.

Respectfully Submitted,  
Barbara S. Rowe  
Administrative Law Judge  
December 15, 1998